PERMODALAN PLANTATIONS SDN. BHD.

v.

RACHUTA SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. C 1270 OF 1982]
25 NOVEMBER 1983

CIVIL PROCEDURE: *Appeal against decision of Senior Assistant Registrar - Summary judgment - Defence of set-off - Whether defendants' claim related to plaintiffs' claim - Rules of the High Court 1980, O. 18 r. 17, O.27 r. 3.*

The plaintiffs' claim was for a sum of RM350,000 which was advanced to the defendants for the purpose of providing the Customs with bank guarantees in respect of the performance of the MAWA Seednuts Supply Agreement for the export of MAWA coconut seeds to the plaintiffs. The said claim was based on an agreement contained in 4 letters written by the plaintiffs to the defendants. The defendants' counter-claim was for RM223,756 which was for the unpaid price of coconut seeds supplied to the plaintiffs under the agreement and RM5,362.95 was in respect of charges for despatch, RM370 for air passage paid by the defendants at the request of the plaintiffs in respect of an employee of the plaintiffs and RM810.35 being charges incurred by them for the despatch of medical apparatus to the plaintiffs. In their counter-claim, the defendants also stated that the plaintiffs owed them RM40,000 being the cost of rock phosphate supplied by them to the plaintiffs. The total amount claimed by the defendants was RM270,299.30.

The defendants admitted receiving the sum of RM350,000. The Senior Assistant Registrar gave judgment in the sum of RM79,700.70 for the plaintiffs and ordered a trial of the balance of the claim together with the defendants' set-off and counter-claim.

Held:

[1] The defendants' counter-claim in respect of the sums of RM223,756 and RM5,363.95 was based on the MAWA Seednuts Supply Agreement referred to in the said 4 letters. These sums were closely inter-related with the plaintiffs' claim. The defendants are, therefore, entitled to plead a set-off in respect of these sums against the plaintiffs' claim.

[2] The other sums claimed by the defendants were liquidated debts due to the defendants by the plaintiffs. They could include them as part of the set-off.

[*Appeal dismissed with costs.*]

Cases referred to:
Morgan & Sons Limited v. S. Martin Johnson & Company Ltd. [1949] 1 KB 107
Aquaflite Ltd. v. Jaymar International Freight Consultants Ltd. [1980] 1 Lloyd's Rep 36
Stooke v. Taylor [1880] 5 QBD 556
The Mersey Steamship Company v. Shuttleworth & Co. [1883] 11 QBD 531

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 17, O. 27 r. 3.

Other sources referred to:
The Supreme Court Practice [1982], vol. 1 p. 341
Halsbury's Laws of England 4th ed. vol. 42, p. 248 para. 425, p. 246 para. 421

For the plaintiffs - Wilfred Abraham; M/s. Shearn Delamore & Co.
For the defendants - Palasundram; M/s. Choong Yik Son

JUDGMENT

Zakaria Yatim J:

This is an appeal against the decision of the Senior Assistant Registrar, who refused to give leave to the plaintiffs to enter judgment against the defendants for the full sum RM350,000 claimed by the plaintiffs. Instead, she gave judgment in the sum of RM79,700.70 for the plaintiffs and ordered a trial of the balance of the claim together with the defendants' set-off and counter-claim.

The plaintiffs' claim was for a sum of RM350,000, which, according to them, was advanced to the defendants in four installments in 1981. The money was advanced to the defendants for the purpose of providing the Royal Malaysian Customs with bank guarantees. The defendants admitted receiving the RM350,000 from the plaintiffs, but stated in their counter-claim that the plaintiffs, too, owed them money in the sum of RM270,299.30. The defendants claimed in their defence that they were entitled to set-off this amount against the plaintiffs' claim.

Counsel for the plaintiffs submitted that, since the defendants had admitted receiving the sum of RM350,000, the plaintiffs were entitled to have judgment against the defendants in the sum claimed under O. 27 r. 3 of the Rules of the High Court 1980. According to him, the defendants' counter-claim and set-off were not connected with the plaintiffs' claim, but should be brought in another suit pending before the Court in Suit No. C 1063/1982. In the instant case, the plaintiffs' claim was based on an agreement contained in four letters written by the plaintiffs to the defendants. These letters stated that sums of money totalling RM350,000 were advanced to the defendants. According to the plaintiffs, the letters were duly endorsed by the defendants, thereby accepting the terms and conditions stated therein. In the other civil suit, the plaintiffs were claiming damages against the same defendants for breach of an agreement. This agreement was separately concluded between the parties on 30 June 1981. The agreement was for the supply of MAWA coconut seeds to the plaintiffs. The defendants' counter-claim and set-off in the present case were based mainly on the MAWA seeds supply agreement. It was the contention of the plaintiffs that the counter-claim and set-off had no relation to the present claim. The plaintiffs, therefore, sought to set aside the order of the Senior Assistant Registrar, and asked for judgment to be entered in their favour in the sum of RM350,000.

Counsel for the defendants submitted that the defendants were admitting the plaintiffs' claim of RM350,000 subject to the set-off. According to the defendants, the counter-claim and set-off were interwoven with the plaintiffs' claim in the present case. They contended that the sum of RM350,000 advanced to them by the plaintiffs was to provide bank guarantees to the Royal Malaysian Customs for the purpose of exporting the MAWA coconut seeds to the plaintiffs pursuant to the agreement dated 30 January 1981. The defendants claimed that they had supplied the plaintiffs with MAWA coconut seeds and the plaintiffs still owed them RM223,756 being the cost of 34,424 seeds. In addition, a sum of RM5,362.95 was due to the defendants being part of the charges incurred by them for the despatch of MAWA seeds to the plaintiffs. A sum of RM370 was also due to the defendants, being the cost of air passage paid by the defendants at the request of the plaintiffs, in respect of an employee of the plaintiffs. The defendants also claimed RM810.35, being charges incurred by them for

the despatch of medical apparatus to the plaintiffs. In their counter claim, the defendants also stated that the plaintiffs owed them RM40,000, being the cost of rock phosphate supplied by them to the plaintiffs. The total amount claimed by the defendants as stated in their counter-claim, was RM270,299.30. According to the defendants, out of this amount, the sums of RM223,756 and RM5,362.95 were connected with the plaintiffs' claim and arose out of the supply of MAWA coconut seeds by the defendants to the plaintiffs.

It is now necessary to examine whether the defendants are entitled to make a plea of set-off in respect of the sum of RM270,299.30 against the plaintiffs' claim.

Order 18 r. 17 of the Rules of the High Court 1980, states that where a claim by a defendant to a sum of money is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counter-claim. This rule, however, does not define or describe what type of claim may be pleaded as a set-off. See *The Supreme Court Practice,* [1982], vol. 1, p. 341.

In my opinion, in order to establish a plea of set-off in the instant case, the defendants must show that their counter-claim and set-off were closely interwoven with the plaintiffs' claim, particularly in respect of the sum of RM223,756. This opinion is based on the decision in *Morgan & Sons Limited v. S. Martin Johnson & Company Ltd.,* [1949]1 KB 107. In that case, the plaintiffs claimed from the defendants a certain sum for the storage of vehicles. The defendants acknowledged that the sum claimed would have been due but for the fact that the plaintiffs had negligently either delivered one of the vehicles to the wrong person or allowed it to be stolen. Tucker LJ, in his judgment said,

> ".... Questions will arise at the trial as to the nature of the duty owed and the circumstances in which the motorcar disappeared, and whether or not the plaintiffs are liable; but it was clearly a *bona fide* claim arising out of the subject matter of the plaintiffs' claim for storage, and closely interwoven with it .... I think that the present case is one where, on the fact set out in the affidavit, the Court of Chancery would clearly have allowed the defendant's claim as an equitable set-off against the plaintiff's claim." I should mention here that *Morgan's* case was applied by the Court of Appeal in *Aquaflite Ltd v. Jaymar International Freight Consultants Ltd.* [1980] 1 Lloyd's Rep 36, See also *Halsbury's Laws of England,* Fourth Edition, v. 42, Pg. 248 para 425.

In the instant case, the plaintiffs' claim was based on an agreement contained in four letters written by the plaintiffs to the defendants. The four letters (Exhibits TMH 1, TMH 2, TMH 3 & TMH 4 of enclosure 18) which were duly endorsed by the defendants, were similar in contents. They referred to the sums of money totalling RM350,000, which were advanced to the defendants for the purpose of providing the Royal Malaysian Customs with bank guarantees. The letters clearly stated that the money was advanced to the defendants so that they could meet the requirements of the Royal Malaysian Customs in the performance of the MAWA Seednuts Supply Agreement dated 30 January 1981. The letters further stated that the money advanced was to be used exclusively for providing bank guarantees to the Royal Malaysian Customs for the export of MAWA coconuts to the plaintiffs. The defendants' counter claim in respect of the sums of RM223,756 and RM5,362.95 was based on the MAWA Seednuts Supply Agreement referred to in the said letters. Under this Agreement (Exhibit TMH 5 of enclosure 18) the defendants were to supply MAWA coconut seeds to the plaintiffs in accordance with the terms and conditions stated therein. According to the defendants, the sum of RM223,756 was for the unpaid price of 34,423 MAWA coconut seeds supplied to the plaintiffs. The sum of RM5,362.95 was in respect of charges incurred

relating to the despatch of MAWA seeds by the defendants to the plaintiffs and was reimbursable by the plaintiffs. In my opinion, the facts clearly show that the sums of RM223,756 and RM5,362.95 claimed by the defendants were so closely inter-related with the plaintiffs' claim. The defendants are, therefore, entitled to plead a set-off in respect of these sums against the plaintiffs' claim.

With regard to the balance of the money stated in the defendants' counter-claim, these were claimed to be liquidated debts due to the defendants by the plaintiffs. The sum of RM370 was in respect of a debit note, Number 1195, dated 30 August 1981. Another debit note, Number 1196, dated 29 August 1981, was for the sum of RM810.35. The amount of RM40,000 was in respect of the supply of rock phosphate to the plaintiffs as per the defendants' Invoice Number 3903. As these sums were claimed to be liquidated debts due to the defendants by the plaintiff, the defendants could include them as part of their claim for the purpose of the set-off. See *Stooke v. Taylor* [1880] 5 QBD 556 at 575. See also *Halsbury's Laws of England, Supra.*, p. 246, para 421.

Since the defendants are entitled to plead a set-off in respect of the sums stated in their counter-claim against the plaintiffs' claim, the Senior Assistant Registrar was, therefore, right in refusing to give leave to the plaintiffs to enter judgment against the defendants on the full sum claimed by them. *The Mersey Steamship Company v. Shuttleworth & Co.* [1883] 11 QBD 531.

For the reasons stated above, I dismiss the appeal with costs.

Also found at [1984] 1 CLJ 115